

Appl. No. : 10/696,799
Filed : October 30, 2003

REMARKS

Claims 1-12 are pending in this application. Claims 9-12 have been added in this response. No new matter has been added with this amendment.

Information Disclosure Statement

In the Office Action of January 24, 2005, the Examiner indicated that information disclosure statements filed on 10/30/2003, 03/22/2004, and 09/23/2004 fail to comply with 37 CFR 1.98(a)(2). However, on February 11, 2005, in a telephone message, the Examiner confirmed that all references had been received and were in the file wrapper. The Applicants respectfully request that the objection to the Information Disclosure Statements be withdrawn and that the Examiner check off references cited in those Information Disclosure Statements.

Double Patenting

In the Office Action of January 24, 2005, the Examiner rejected Claims 1-8 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-6 of U.S. Patent No. 6,641,557 to Frazier, et al. (the '557 patent). As noted by the Examiner, a timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome a rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

The '557 patent and the present application are commonly owned by ev3 Sunnyvale, Inc. The '557 patent is a divisional of U.S. Patent No. 6,231,561 (the '561 patent). The inventors of the '561 patent assigned their rights to the '561 patent and all divisionals and continuations related to the '561 patent in an assignment to MV Medical Devices recorded at reel 010261, frame 0181 on 9/20/99. MV Medical Devices subsequently changed its name to Appriva Medical, Inc. and then to ev3 Sunnyvale, Inc., as evidenced by the name change documents recorded at reel/frame 012322/0178 on 11/29/01 and 013403/0477 on 10/25/02, respectively. The present application is a continuation of the '557 patent, and is owned by ev3 Sunnyvale, Inc. as well, as evidenced by the same assignment and name change documents.

Therefore, the attached terminal disclaimer overcomes the double patenting rejection, and the Applicants respectfully request its withdrawal. It is believed that the attached terminal

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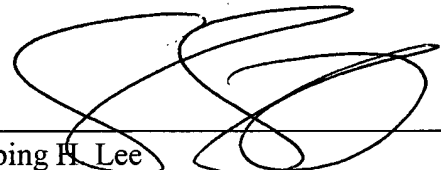
disclaimer places the present application in condition for allowance, and Applicants respectfully request the same.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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